IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
PUBLIC INTEREST LITIGATION NO.67 OF 2002

Anand @ Bhalchandra Keshav Paranjpe
Age 47 years, Occupation: Corporator and
Social Worker, R/at Mithilanagari, Sangli. .. Petitioner

v/s.

1. The Secretary,
Public Works Department, Mantralaya,
Mumbai

2. The State of Maharashtra
(through Mantralaya, Mumbai-400032) .. Respondents

Mr.K.S.Patil for the petitioner.

Mr.P.M.Patil, Assistant Government Pleader for the respondents.

CORAM : R.M. LODHA &
A.S.BAGGA, JJ.

DATED : 15TH JUNE, 2006.

ORAL JUDGMENT (Per R.M.Lodha, J.)

The petitioner has raised the grievance by means of this Public Interest Litigation that the members of Maharashtra Legislative Assembly (MLAs) and Maharashtra Legislative Council (MLCs) who were provided with accommodation in Amdar Niwas (MLA Hostel) have not paid the agreed rent for the occupation.

2. In response to the writ petition, affidavits on behalf of the State Government have been filed from time to time. The first order was passed by this court on 1st October, 2000 directing the State Government to issue notices to the former and present MLAs and MLCs to pay the arrears in respect of the MLA Hostel. It appears that with regard to the sitting MLAs and the MLCs and few former MLAs and MLCs, some recovery of dues was made. As regards the expired former MLAs and MLCs, in the affidavit filed

on 13th December, 2002, it was stated that a proposal for waiver of such recovery has been submitted to the Government for approval.

3. By the order dated June 4, 2003, the Bench presided over by the then Chief Justice wanted the Government to show the authority for waiver of such recovery. The matter was adjourned to enable the State Government to file an affidavit in that regard. Pursuant to the order dated June 4, 2003, the State Government filed an affidavit on June 13, 2003 through the Executive Engineer, Presidency Division, Mumbai. It was stated therein that the Government had already waived recoverable amount from the expired members vide Government resolution (GR) dated November 28, 1988. It was also stated that as per the said GR and on the same analogy, the proposal of waiver of arrears recoverable from the expired MLAs and MLCs has been submitted to the Government and the decision is awaited. The court directed the State Government to file further affidavit stating therein as to whether after the death of the MLAs and MLCs, the family members of such deceased members are eligible to get and are getting any financial or other benefits and if so, what are such benefits. The court observed that it would consider the affidavit and pass an appropriate order thereafter.

4. In pursuance of the order dated July 16, 2003, further affidavit has been filed by the Executive Engineer, Presidency Division, Mumbai wherein it is stated that certain benefits are extended to the family members after the death of the MLAs and MLCs.

5. It transpires from the record that further affidavit was filed by the Executive Engineer, Presidency Division, Mumbai stating therein that the decision from the Government is awaited on the proposal for granting waiver in respect of the deceased MLAs and MLCs. It was stated in the said affidavit that former MLAs and MLCs (including deceased) against whom recoveries are outstanding are about 213 and amount that is to be recovered from them is about Rs.96.60 lakhs.

6. Subsequently an affidavit has been filed by Shri A.B.Gaikwad, Executive Engineer, Presidency Division, Mumbai giving the statement of the notices issued to the sitting and former MLAs and MLCs.

7. From time to time, the orders came to be passed by the court directing the State Government to proceed with the recovery of the due amount from the concerned MLAs and MLCs. In the last affidavit filed by Shri A.B.Gaikwad, Executive Engineer, Presidency Division, Mumbai, it is stated that out of 330 defaulter MLAs/MLCs/Ex.MLA/Ex.MLC, 180 have cleared their dues. Against 65 deceased members, the Government has waived the recovery and 67 MLAs and MLCs continue to be defaulter.

8. That the recovery of outstanding amount from MLAs, MLCs, ex-MLAs and ex-MLCs who are alive is to be made is not in dispute. As a matter of fact, in another Public Interest Litigation filed by Mr.M.P.Vashi, the State Government informed the court

that necessary instructions have been issued to the concerned Treasury Officers and the Collectors to appropriate an amount of Rs.3000/- per month from the amount of salary/pension payable to such MLAs, MLCs, ex-MLAs and ex-MLCs. In our order passed on 8th June, 2006, we approved this method of recovery and at the same time, directed the State Government that where the outstanding amount exceeds Rs.50,000/-, the State Government shall take necessary steps in recovering the due amount as arrears of land revenue. We reiterate the said order and direct that the order that was passed by us on 8th June, 2006 in writ petition (PIL_ 2449/05, M.P.Vashi v. State of Maharashtra and others) shall also apply to all those MLAs, MLCs, ex-MLAs and ex-MLCs who are defaulters in the present Public Interest Litigation.

9. The question that now remains to be decided is in respect of the ex-MLAs and MLCs who are dead and regarding whom the State Government has written off the arrears recoverable from them vide GR dated 5th August, 2004.

10. We repeatedly asked Mr.P.M.Patil, the Assistant Government Pleader to show us the law that sanctions the waiver of such recovery of arrears by the State Government. The Assistant Government Pleader conceded that there is no statutory law that authorises the State Government to waive the recovery of arrears of rent for use and occupation of the MLA Hostel from the expired MLAs and MLCs. He, however, made two-fold submission. First, he submitted that the Cabinet in its wisdom took the decision to waive the recovery of arrears of rent from the expired MLAs and MLCs. Second, he would submit that on

previous occasion also the State Government vide Government resolution dated November 28, 1988, had waived recovery of arrears of rent for the use and occupation of Government hostel from the expired members.

11. The submissions of the Assistant Government Pleader do not appeal us. Dealing with the second submission first, suffice it to say that a wrong administrative precedent does not validate or legalise the action which is not sanctioned by law. An administrative decision taken earlier which itself was not in accord with law would not justify such administrative decision to be repeated. If the GR dated 5th August, 2004 whereby it has waived recovery of arrears of rent amounting to Rs.13,81,794/- from expired MLAs and MLCs is not legal, it would not stand legalise merely because vide earlier GR dated November 28, 1988, the Government had waived the recoverable amount of arrears of rent for use and occupation of the Government hostel from the expired members. We are, thus, of the view that the GR dated November 28, 1988 does not justify nor does it legalise the GR dated 5th August, 2004. The legality of the GR dated 5th August, 2004 must stand on its own.

12. We are a State governed by rule of law. Every action of the State Government, therefore, must be legal, reasonable, rational and in conformity with law. Even the administrative decision of the Cabinet has to be guided by the law and founded on law. The Assistant Government Pleader conceded that there is no statutory provision that supports such decision. The note of the Chief Secretary that it is difficult to recover the outstanding rent from

deceased MLAs and MLCs without something more that the efforts of recovery were seriously made and that failed is of not much help. The fact that the family members of the deceased MLAs and MLCs get some financial benefit would rather show that if the State Government desired to recover the due amount of rent from MLAs and MLCs, that could have been easily recovered by appropriating due amount from such financial benefits. The amount that the State is entitled to recover from the defaulter deceased MLAs and MLCs, if not recovered without any justification is loss of the public money. In this view of the matter, we find no justification or rationality in the decision of the State Government in waiving the recovery of arrears of rent from the deceased MLAs and MLCs.

13. We, accordingly, direct the State Government to initiate process of recovery of arrears of rent from the 65 deceased MLAs and MLCs. The arrears of rent amounting to Rs.13,81,794/- from the 65 deceased MLAs and MLCs shall be recovered from the estate of the deceased or the family pension payable to the legal heirs of the deceased MLAs and MLCs.

14. We record and accept the statement of the Assistant Government Pleader that recovery process as per this order shall be initiated by the State Government without any delay.

Writ petition is disposed of accordingly.

(R.M.LODHA, J.)

(A.S.BAGGA, J.)